

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION III

CA06-589

December 13, 2006

WILLIAM ROBERTS AND WENDY
ROBERTS
APPELLANTS

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. DR-2004-846-3PT]

V.

HON. WILLIAM W. BENTON,
JUDGE

JACKY POTTORFF

APPELLEE

APPEAL DISMISSED

Appellants are the maternal grandparents of the infant WGM. They obtained a guardianship over the child in Saline County. Subsequently, appellee was the subject of a paternity complaint filed by the Child Support Enforcement Unit in Jefferson County, and an order was entered establishing appellee as the child's father. In the context of the latter proceeding, appellee filed a petition for custody in Jefferson County. Appellants appeared seeking dismissal of the custody petition, arguing that the only proper venue was Saline County. The trial court disagreed with this argument, ruling that custody was a proper remedy in a paternity action but in its written order expressly refusing to take any action on

the custody petition unless and until the matter should be transferred by the Saline County Circuit Court. Appellants appeal from that order.

Our jurisdiction is not invoked until a final order has been entered in the circuit court, with the exception of those immediately appealable orders listed in Ark. R. App. P. - Civ. 2 (2006). *Epting v. Precision Paint & Glass, Inc.*, 353 Ark. 84, 110 S.W.3d 747 (2003). Although neither party raises the issue, the question of whether an order is final and subject to appeal is a jurisdictional question that we will raise sua sponte. *Reed v. Arkansas State Highway Commission*, 341 Ark. 470, 17 S.W.3d 488 (2000). The order in the present case was a denial of a motion to dismiss, and the argument goes to the issue of venue. However, denial of a motion to dismiss is not a final judgment from which an appeal will lie, *Cigna Insurance Co. v. Brisson*, 294 Ark. 504, 744 S.W.2d 716 (1988), and an order granting or denying a change of venue is not appealable, *State v. Langstaff*, 231 Ark. 736, 332 S.W.2d 614 (1960).

No action was taken on the custody petition in this case and, by the terms of the order appealed from, no action will be taken unless and until a further action occurs, *i.e.*, transfer of the matter by the Saline County Court. The order did not dismiss parties from the trial court, discharge them from the action, or conclude their rights to the subject matter in controversy, and it is therefore not a final order from which an appeal will lie. *Epting v. Precision Paint & Glass, Inc., supra.*

Appeal dismissed.

GLADWIN and ROBBINS, JJ., agree.